APPENDIX

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION TWO

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,
vs.
CHRIS GREENFIELD,
Defendant and Appellant.

1 Crim. No. 22889

(Sup. Ct. No. 103255)

THE COURT:*

Chris Greenfield appeals (Pen. Code, §1538.5, subd. (m)) after having pled guilty to possession of a concealable firearm by an ex-felon (Pen. Code, §12021, subd. (a)) and possession of cocaine (Health & Saf. Code, §11350). He argues that the court erred in denying his motion to suppress evidence. We affirm.

The sole question is whether, given a search and seizure pursuant to a warrant, which was correct in all respects save that the magistrate inadvertently failed to sign

* Before Rouse, Acting P.J., Miller, J., and Smith, J.

the warrant before the search, the evidence seized must be suppressed. By stipulation and concession, appellant allows that the magistrate did read and sign the affidavit before issuing the warrant, that the magistrate intended to issue the warrant, and in fact believed he had properly issued the warrant. There is no evidence to suggest, and appellant does not contend, that the police officers were aware of the clerical error before they concluded the search, or that anyone upon the premises challenged the warrant at the time of the search.

The question has arisen before, and it has been resolved adversely to appellant's position. (Sternberg v. Superior Court (1974) 41 Cal.App.3d 281; People v. Superior Court (Robinson) (1977) 75 Cal.App.3d 76, 79-80.) These cases hold that under such circumstances the warrant is valid, because the procedures employed fully comply with the applicable constitutional requirements (U.S. Const., 4th Amend.; Cal. Const., art. I, § 13); and that even if the warrant is deemed invalid, since there was absolutely no official misconduct, it would serve no purpose of the exclusionary rule to suppress the evidence and therefore the exclusionary rule should not be employed.

Appellant relies on the inapposite case of Bowyer v. Superior Court (1974) 37 Cal. App.3d 151. Bowyer held invalid, and suppressed the evidence resulting from, a "telephonic" search warrant which was not put into writing until after the search. Such a warrant would also have been found invalid under the analysis of Sternberg and Robinson. (Cf. Sternberg, supra, 41 Cal.App.3d at pp. 287, fn. 3, 290-291; Robinson, supra, 75 Cal.App.3d at p. 80.) The difference is that here there was a written warrant antecedent to, and controlling, the search.

Appellant correctly notes that Penal Code sections 1523 and 1528, subdivision (a), require that the written warrant must also be "signed." But we need not confront his argument, based on dicta in Bowyer, that every statutory requirement must be fully met before the warrant can be deemed valid. (See 37 Cal.App.3d at p. 164; compare Sternberg and Robinson, we hold that whether or not the warrant was "valid," under the facts present here the exclusionary rule should not be employed. (Cf. Pen. Code, §1538.5, subd. (a)(2) [which suggests the same analysis].)

There was no error in this case.
The judgment is affirmed.

I hereby certify that on this 13th day of September, 1982, three copies of the Petition for Writ of Certiorari were mailed, postage prepaid to:

George Deukmajian
Attorney General
State of California
350 McAllister Ave.
San Francisco, CA 94102,

Counsel for the State of California. I further certify that all parties required to be served have been served.

JERROLD M. LADAR

JERROLD M. LADAR
507 Polk Street
Suite 310
San Francisco, CA 94102
Counsel for Petitioner